IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

MFA.No. 223 of 2006()

(W.C.C.No.86/99 OF WORKMEN'S COMPENSATION COURT, KOLLAM)

APPELLANT: OPPOSITE PARTY

THE MANAGER,
HARRISONS MALAYALAM LTD.,
NAGAMALAI ESTATE,
KALTHURUTHY P.O., PUNALUR.

BY ADV. SRI.A.M.SHAFFIQUE

RESPONDENTS: APPLICANT

PRABHAKARAN,
KIZHAKKATHIL PUTHEN VEEDU,
MAMPUZHATHARA P.O.

BY ADV. SRI.THOMAS ABRAHAM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A. No. 223 OF 2006

Dated this the 28th June, 2007.

J U D G M E N T

The opposite party in W.C.C.No.86/1999, on the file of the Commissioner for Workmen's Compensation and Deputy Labour Commissioner, Kollam, is the appellant. The appellant is challenging an order passed by the Commissioner, by which, the appellant was directed to pay an amount of Rs.12,390/= as compensation, with 12% interest per annum, from 29.6.1999, the date of accident. The respondent filed a petition claiming compensation alleging that on 29.6.1999, at about 11.40 a.m., he sustained an employment injury, and hence, he is entitled to get a compensation of Rupees One Lakh. The fact that the applicant was a permanent worker of appellant was admitted. The respondent sustained employment injuries and he was absent for 66 days, and he was paid an amount of Rs.2718.73 as monthly compensation were also admitted.

2. The only dispute was regarding the quantum of compensation. The applicant did not produce any medical certificate assessing the disability. The Commissioner, without any basis, has fixed the loss of earning capacity at 10%. That was clearly illegal. Being a case claiming compensation, the respondent-workman, ought

to have subjected himself for examination by a medical board or by a medical practitioner. Therefore, I am of the view that that part of the award fixing compensation by assessing his disability to 10% is to be set aside.

In the result, the appeal is allowed in part. The finding of the Commissioner that the respondent was an employee is the appellant and he sustained employment injury is confirmed. But that part of the order for which the workmen's Compensation Court fixed the compensation at Rs.12,390/= alone is set aside. The case is remanded to the Workmen's Compensation Court, Kollam, for fixing the quantum of compensation alone. The Commissioner for Workmen's Compensation Court is directed to take W.C.C.No.86/1999, back to its file, and dispose of the same afresh, after giving an opportunity to both sides, to adduce evidence.

K.PADMANABHAN NAIR,
JUDGE

nj.